



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV-121-FOR; Docket ID OSM-2013-0010;
S1D1SSS08011000SX066A00067F144S180110;
S2D2SSS08011000SX066A00033F14XS501520]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM),
Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia is submitting a proposed amendment to revise its West Virginia Surface Coal Mining and Reclamation Act

(WVSCMRA).

Senate Bill 497 creates a new section in the West Virginia Code, designated as section 22-3-33, relating to the award of attorney fees and costs by the Surface Mine Board and courts in appeals from actions taken by the West Virginia Department of Environmental Protection (WVDEP) under the approved State surface mining program.

DATES: We will accept written comments on this amendment until 4:00 p.m. (EST), on (Insert date 30 days after date of publication in the Federal Register). If requested, we will hold a public hearing on the amendment on (Insert date 25 days after date of publication in the Federal Register). We will accept requests to speak at a hearing until 4:00 p.m. (EST), on (Insert date 15 days after date of publication in the Federal Register).

ADDRESSES: You may submit comments, identified by “WV-121-FOR; Docket ID OSM-2013-0010” by any of the following methods:

- *Federal eRulemaking Portal:* The proposed rule has been assigned Docket ID OSM-2013-0010. If you would like to submit comments through the Federal eRulemaking Portal, go to <http://www.regulations.gov> and follow the instructions for submitting comments.
- *Mail/Hand Delivery:* Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston,

West Virginia 25301. Please include the rule identifier (WV-121-FOR; Docket ID OSM-2013-0010) with your written comments.

Instructions: All submissions received must include the agency Docket ID OSM-2013-0010 for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the **Public Comment Procedures** heading in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Docket: The proposed rule and any comments that are submitted may be viewed over the internet at <http://www.regulations.gov>. Look for Docket ID OSM-2013-0010. In addition, you may review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of this amendment by contacting OSM's Charleston Field Office listed below.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347-7158. Email: chfo@osmre.gov.

West Virginia Department of Environmental Protection, 601 57th Street, SE, Charleston, WV

25304, Telephone: (304) 926-0490.

In addition, you may review a copy of the amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 604 Cheat Road, Suite 150, Morgantown, West Virginia 26508, Telephone: (304) 291-4004 (By Appointment Only).

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 313 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255-5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, Telephone: (304) 347-7158. Email: chfo@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the West Virginia Program
- II. Description and Submission of the Proposed Amendment
- III. Description of OSM's Proposed Action
- IV. Public Comment Procedures
- V. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act provides a State with the authority to assume primacy to regulate surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "...a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act; . . . [and] rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior (the Secretary) conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, Federal Register (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Description and Submission of the Proposed Amendment

West Virginia is submitting a proposed amendment to revise WVSCMRA.

Senate Bill 497 creates a new section in the West Virginia Code, designated as section 22-3-33, relating to the award of attorney fees and costs by the Surface Mine Board and courts in appeals from actions taken by the WVDEP under the approved State surface mining program. Senate

Bill 497 was adopted by the West Virginia Legislature on March 10, 2012, and signed by the Governor on March 30, 2012. These changes became effective under State law on June 8, 2012.

This action is being taken due to the apparent deletion of State statutory provisions from the approved State program which provided that any person involved in any administrative or judicial proceeding is entitled to reimbursement of all costs and expenses, including attorney fees, incurred by his participation in proceedings as determined by the Surface Mine Board or State court.

The WVDEP requests that we approve the changes in the approved State program made by Senate Bill 497. In addition, the WVDEP requests that we approve the deletion of former appeal provisions at West Virginia Code sections 22-4-2 and 22-4-3 regarding the Reclamation Board of Review from the approved State program.

III. Description of OSM's Proposed Action

The purpose of these changes is to provide authorization to the State Surface Mine Board or any reviewing State court to award attorney fees and costs in administrative proceedings arising under WVSCMRA. The proposed State revisions are intended to conform to the Federal requirements at 30 CFR 840.15, 43 CFR 4.1290-1296 and section 525(e) of SMCRA. The full text of the amendment is available for your review in the docket or online at www.regulations.gov.

IV. Public Comment Procedures

Pursuant to 30 CFR 732.17(h), we are seeking your comments on whether these amendments satisfy the applicable program approval criteria within 30 CFR 732.15. If approved, these revisions will become part of the West Virginia program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Charleston Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an E-mail or Word file avoiding the use of special characters and any form of encryption. Please also include “Attn: SATS NO. WV-121-FOR; Docket ID OSM-2013-0010” and your name and return address in your Internet message. If you do not receive a confirmation that we received your Internet message, contact the Charleston Field Office at (304) 347-7158.

Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m. (EST), on [Insert date 15 days after date of publication in the Federal Register]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We

will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

V. Procedural Determinations

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the Federal Register indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface Mining, Underground mining.

_____	__ March 28, 2014 __
Thomas D. Shope, Regional Director	Date
Appalachian Region	

[FR Doc. 2014-11678 Filed 05/19/2014 at 8:45 am; Publication Date: 05/20/2014]